No. 495

FILED
OCT 9 1956
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1956

PEOPLE OF THE STATE OF ILLINOIS,
Plaintiffs-Appellees,

VS.

R. K. HOLMSTROM,
Defendant-Appellant.

APPEAL FROM THE SUPREME COURT OF ILLINOIS

Jurisdictional Statement

JOHN CHIVARI
104 Fox Street
Aurora, Illinois
Attorney for Appellant.

CHICAGO LAW PRINTING CORPORATION, 189 W. MADISON, CHICAGO – FRANKLIN 2-6521

INDEX TO SUBJECT MATTER.

PAGE

Opinion and Report below 1

Statement of Grounds for Jurisdiction:

i Nature of proceeding 1

ii Chronology 3

iii Statute Conferring Jurisdiction 3

iv Cases in re Jurisdiction 4

v Text of Statutes Involved 4

Questions Presented On Appeal 5

Statement of the Case 5

Substantiation of Question 9

Summary 13

Order Appealed 14

TABLE OF CASES

Albany City Nat. Bank v. Maher, 20 Blatchf. 341, 9 Fed. 884 ..... 4, 14

Barnett v. Cook County, 388 Ill. 251, 57 N. E. (2) 873 13

Chicago Railways, In Re: 175 Fed. (2) 282 4

City of Lawrenceville v. Maxwell, 6 Ill. (2) 42, 126 N. E. (2) 671 13

Dietman v. Hunter, 5 Ill. (2) 486, 126 N. E. (2) 22 13

French v. Edwards, 80 U. S. 506, 20 L. Ed. 702 ..... 9, 13

Griffin v. Cook County, 369 Ill. 380, 16 N. E. (2) 906 13

Heidenway v. Harding, 336 Ill. 606, 168 N. E. 630 13

PAGE

London v. City of Denver, 210 U. S. 373, 52 L. ed. 1103 .. 12

Lyon v. Alley, 130 U. S. 177, 32 L. Ed. 899 10

McGregor v. Hogan, 263 U. S. 234, 68 U. S. 282 12

Nickey v. Mississippi, 292 U. S. 393, 78 L. Ed. 1323 ....9, 13

Orcutt v. Crawford, 85 Fed. (2) 146 13

People v. Jenkins, 347 Ill. 278, 178 N. E. 95 13

People v. Wisconsin R. R. Co., 219 Ill. 94, 76 N. E. 80 4

People v. Women's Athletic Club, 360 Ill. 577, 196 N.E. 881 3

Road Improvement Dept. No. 1. v. Missouri Pacific R. R. Co., 274 U. S. 188, 71 L. Ed. 992 ..... 4, 14

Stuart v. Palmer, 74 N. Y. 183 14

Turpin v. Lemon, 187 U. S. 51, 47 L. Ed. 70 13

William v. Albany County, 22 Blatchf. 302, 21 Fed. 99 4

Williams v. Board of Supervisors, 122 U. S. 154, 30 L. Ed. 1088 .....11, 13

Wimberly v. Cowan Investment Co., 80 Fed. (2) 452 13

STATUTES.

Illinois Revised Statutes, (1955) Chap. 120, Par. 51 *et seq.* 5

Title 28 U. S. C. Sec. 1257 (2) 3

OTHER CITATIONS

A. L. R. Vol. 140, Page 1088 4

Cooley on Taxation (4th Ed.) Vol. 3, Page 2257 13

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1956

PEOPLE OF THE STATE OF ILLINOIS,
Plaintiffs-Appellees,

vs.

R. K. HOLMSTROM,
Defendant-Appellant.

APPEAL FROM THE SUPREME COURT OF ILLINOIS

Jurisdictional Statement

OFFICIAL REPORT OF OPINION OF THE COURT BELOW.

The opinion, findings and order of the Supreme Court of Illinois are reported in *People of the State of Illinois, Plaintiff*, v. *R. K. Holmstrom, Defendant*, 8 Illinois (2) 401, 134 N. E. (2) 246; a copy of which is attached herein as Appendix A.

STATEMENT OF GROUNDS UPON WHICH JURISDICTION OF THIS COURT IS INVOKED.

This was an action in Debt for delinquent personal property taxes authorized to be brought by Section 275 of the Revenue Act of 1939 of the State of Illinois, as amended. (See Appendix B.)

Statutes Relating to Valuation of Property and Review Assessment:

Listing of Personal Property for Taxation

Section 48, Revenue Act of 1939 (Appendix B) (Provides that owners must list personal property under oath.)

Valuation by Assessor

Section 51, Revenue Act of 1939 (Appendix B) (Provides for the valuation of property by assessor at full fair cash market value thereof.)

Return of Books to Supervisor of Assessments

Section 94, Revenue Act of 1939 (Appendix B) (Provides for the return of the assessment books before June 1.)

Assessments and Changes by Supervisor of Assessments

Section 95, Revenue Act of 1939 (Appendix B) (Authorizes the Supervisor of Assessments to review the assessments.)

Publication of Assessment List by Supervisor of Assessments

Section 103, Revenue Act of 1939 (Appendix B) (Requires publication on or before July 10 or August 10, each year.)

Powers and Duties of Board of Review

Section 108, Revenue Act of 1939 (Appendix B) (Provides power and authority in Board of review to hear complaints Relating to Assessments.)

Return of Books to Board of Review

Section 100, Revenue Act of 1939 (Appendix B) (Provides that assessment books shall be turned over to Board of Review before Third Monday in June.)

Validation of Assessments notwithstanding failure to publish as provided by Statute.

Laws of Illinois 1955, Page 175, S. B. No. 185 (Appendix B)

(Illinois Courts have consistently held that relief cannot e granted for alleged excessive or discriminatory assess-ients where the complainant has failed to pursue his stat-tory remedy before the Board of Review.

People v. *Women's Athletic Club,* 360 Ill. 577, 579, 196 N. E. 881.)

Chronology.

)ate of judgment in County Court: June 23, 1955.

)ate of affirmance by Supreme Court of Illinois: March 22, 1956.

)ate Rehearing denied: May 22, 1956.

)ate Notice of Appeal filed: August 10, 1956.

Statute Conferring Jurisdiction of This Appeal.

Reference is hereby made to subsection (2) of Section 257 of Title 28 of the Judicial Code of the United States o sustain rights of Petition to appeal from the final judg-ient of the Supreme Court of Illinois, the pertinent por-ions of which are as follows:

"Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:

• • •

"(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties of laws of the United States, and the decision is in favor of its validity."

• • •

Cases Believed to Sustain Jurisdiction.

Road Improvement Dept. No. 1 v. *Missouri Pacific Railroad Company,* 274 U. S. 188, 71 L. Ed. 992, 994.

Williams v. *Albany County,* 22 Blatchf. 302, 21 Federal 99 (affirmed in 122 U. S. 154, 30 L. Ed. 1088).

Albany City National Bank v. *Mahr,* 20 Blatchf. 341, 9 Federal 884.

In Re: Chicago Rys. Co., 175 Fed. 282, 289 (Certiorari denied.)

People v. *Wisconsin Central R.R. Co.,* 219 Ill. 94, pages 96-97, 76 N.E. 80.

Also other cases cited on this point in 140 A.L.R. 1000.

State Statute of Which the Validity Is Involved.

"An Act to legalize and validate tax assessments made during the year 1954 and all years prior thereto and to make legal and valid the collection of taxes based on such assessments." Approved May 21, 1955. Laws of Illinois 1955, page 175." Senate Bill No. 185.

"(1) In all cases where real or personal property has been assessed for the purpose of taxation during the year 1954 and all years prior thereto as provided in the 'Revenue Act of 1939' filed May 17, 1939 as amended, except that no publication of the assessment of real or personal property, or both, was made as provided by Section 103 or 104 of said Revenue Act of 1939, such assessments of real or personal property, or both, are hereby validated for all purposes of taxation notwithstanding that the publication of the assessments of real or personal property or both, was not made as provided by statute. The extension of taxes on such real or personal property, assessments, or both, are made legal and valid for the purpose of collection

of taxes notwithstanding that the publication of real or personal property assessments, or both, was not made as provided by statute."

Illinois Revised Statute 1955 (Bar Ass'n Ed.) Chap. 120, Paragraph 823.

QUESTIONS PRESENTED BY THIS APPEAL.

Where the local assessor, who is required by statute to publish the assessed valuation imposed upon the personal property of the Appellant for taxation purposes, fails to publish said assessment within the time limited by said statute, may the state legislature validate said failure to publish without denying to the Appellant his rights of due process of law under the Constitution of the United States?

Where the local assessor, who is required by Statute to publish the assessed valuation imposed upon the personal property of the Appellant for taxation purposes, fails to publish said assessment within the time limited by said Statute, would the action to collect the taxes levied pursuant to said assessment be repugnant to Appellant's right of due process of law under the Constitution of the United States?

STATEMENT OF THE CASE.

This was an action in debt in the County Court of Kane County, Illinois for delinquent personal property taxes for the taxable years 1947, 1948, 1950, 1951, 1952, and 1953 (R. 3).

The defendant, a resident of Aurora Township, filed a plea of *nil debit* supported by affidavit wherein one of the defenses invoked was that the statutory requirements relating to the publication of the assessment lists as required by Section 103 of the Revenue Act of 1939 were not met and that as a result, this action is in violation of the statutes (R. 3) and the due process Clause of the State and Federal Constitution (R. 4).

The publication of assessment lists for personal property in Aurora Township as published by the supervisor of assessments of Kane County, Illinois, were published once only for each respective year as follows: (R. 4)

For the year 1947 the list was published on August 16, 1947.

For the year 1948 the list was published on August 26, 1948.

For the year 1950 the list was published on October 19, 1950.

For the year 1951 the list was published on September 21, 1951.

For the year 1952 the list was published on August 30, 1952.

For the year 1953 the list was published on August 29, 1953.

Kane County, Illinois attained a population of 150,000 or more inhabitants in the year 1950. It was shown that during the years 1947, 1948, and 1950, at its organizational meeting in June of each respective year, the Board of Review of Kane County adopted rules of procedure which included the rule: "All persons, corporations, or companies, having complaints to offer shall be made in writing, in duplicate, signing name and address and file with the clerk of the Board on or before the 1st day of August, 19——". After 1950, the rule was changed to read that complaints shall be filed "on or before the first day of August or within 10 days after publication" of the assessment list. These rules were spread upon the records (R. 5) of the Board of Review and said records fail to reveal the adoption of any rule which would tend to change, revise or amplify those rules of procedure.

At the close of the plaintiffs' case the defendant moved for judgment for defendant on grounds that the statutory requirements relating to publication of the assessment lists within the time limited by statute were not met, thereby violating the defendant's rights under said statutes and his rights of due process of law under the State and Federal Constitution. (R. 6)

The Court entered judgment for the plaintiffs and against the defendant for delinquent personal property taxes for each of the years 1947, 1948, 1950, 1951, 1952 and 1953. Motions for a new trial and in arrest of judgment were denied. (R. 6)

The following errors were assigned to the Illinois Supreme Court:

1. The Court erred in overruling the defendant's motion for judgment for defendant.
2. The Court erred in overruling defendant's motion for a new trial.
3. The Court erred in overruling defendant's motions in arrest of judgment. (R. 6)

Judgment for plaintiffs was entered in the County Court on June 23rd, 1955 (R. 6-13). It is hereby noted that the Plaintiff-Appellees did not invoke the validating act hereinbefore noted until they filed their Brief and Argument in the Supreme Court of Illinois. (R. 14)

In his Reply Brief, the Appellant answered the Appellees' invocation of the validating act of the State Legislature by submitting two legal Propositions:

1. An Act of the General Assembly to validate property taxes notwithstanding that the publication of the assessment of real or personal property was not made as provided by statute is illegal and void. (R. 19)

2. Statutory provisions for notice relating to assessment of property for taxation are based on the constitutional rights of the taxpayer and such rights may not be violated by statutory enactment (R. 20).

The Appellant's Petition for Rehearing called the appellate court's attention to the false legal premise it had assumed that "there is no Constitutional requirement that tax assessment lists be published" (R. 29-30). We also asked the court to note that no legal precedent or authority was cited in support thereof. (R. 30) Ten cases construing the Constitution of the United States and six cases construing the Illinois Constitution contrariwise were directed to the court's attention (R. 30).

Constitutional points raised in Illinois Supreme Court:

The provisions of Section 103 of the Revenue Act of 1939 as amended, are for the protection of the taxpayer and are mandatory and the failure of the supervisor of assessments of Kane County, Illinois, to publish the assessment list within the time required under the provisions of said section is a denial of due process under the provisions of the Fourteenth Amendment of the United States Constitution and Article 2 of Section II of the Constitution of the State of Illinois, and renders the present proceedings null and void and without effect. (R. 7)

The right to interpose a defense in a pending suit is a vested and substantial right which the General Assembly may not destroy by the enactment of a law which operates retroactively or retrospectively. (R. 34)

We do not feel that the constitutional questions raised were given adequate consideration by the Supreme Court of Illinois.

Ruling by Illinois Supreme Court.

Rule announced by Supreme Court of Illinois:

> "In the absence of a constitution. prohibition the legislature may validate by a curative act any proceeding which it might have authorized in advance. (R. 24)
>
> "Looking at the present case, it is clear there is no constitutional requirement that assessment lists be published. Likewise, there seems to be little question that the legislature has the power to require or waive their publication as it sees fit." (R. 24-25)

SUBSTANTIATION OF FEDERAL QUESTIONS AS TO REQUIRE PLENARY CONSIDERATION.

We will first consider the pronouncement of the Illinois Supreme Court that "it is clear there is no constitutional requirement that assessment lists be published."

The foregoing naked statement, made without qualification, is directly opposed to the repeated holdings of the United States Supreme Court on the issue. And for comparison, we offer the expression of this court in the case of *Nickey* v. *Mississippi*, 292 U. S. 393, 78 L. ed. 1323, 1326, wherein were summarized the rulings in four previous cases:

> "Accepting as we must, this construction of the laws of the state by its highest court, they infringe no constitutional limitation. There is no constitutional command that notice of the assessment of a tax and an opportunity to contest it must be given in advance of the assessment. It is enough that all available defenses may be presented to a competent tribunal before exaction of the tax and before the command of the state to pay it becomes final and irrevocable."

In *French* v. *Edwards*, 80 U. S. 506, 20 L. ed. 702 the court stated:

> "There are, undoubtedly, many statutory requisitions intended for the guide of officers in the conduct of business devolved upon them, which do not limit

> their power or render its exercise in disregard of the requisitions ineffectual. Such, generally, are regulations designed to secure order, system and dispatch in proceedings, and by a disregard of which the rights of parties interested cannot be injuriously affected. Provisions of this character are not usually regarded as mandatory unless accompanied by negative words importing that the acts required shall not be done in any other manner or time than that designated. But when the requisitions prescribed are intended for the protection of the citizen, and to prevent a sacrifice of his property, and by a disregard of which his rights might be and generally would be injuriously affected, they are not directory but mandatory. They must be followed or the acts done will be invalid. The power of the officer in all such cases is limited by the manner and conditions prescribed for its exercise."

Lyon v. *Alley,* 130 U. S. 177, 32 L. ed. 899, involved construction of a statute requiring a commissioner of improvements to deposit the assessment roll with the "register," who was then required to "place in the hands of the collector of taxes a list of the persons chargeable with such tax, together with the amount due by each person." The statute further provided that within ten days after receiving such list the collector shall give notice in writing to each taxpayer. In holding that the requirements were intended to be mandatory, the court declared:

> "The provisions of statutes as to the form and mode of assessments, as to tax lists, and the place where the tax lists are to be deposited, are, according to the highest authority, designed for the benefit of the taxpayers and the protection of their property from sacrifice."

In the light of the foregoing, and to satisfy constitutional limitations, we wish to suggest that the above-quoted pronouncement of the Illinois Supreme Court should have been qualified with the proviso: "Provided that some other form of notice and opportunity for hearing is afforded."

Next, the Illinois Supreme Court states: "There is little question that the legislature has the power to require or waive their publication as it sees fit."

Again we say that this statement, unqualified, does not correctly present the law.

We believe that the following language taken from the opinion of Mr. Justice Fields in *Williams* v. *Board of Supervisors of the County of Albany,* 122 U.S. 154, 30 L. ed. 1088, from page 1089 and 1090, defines the law more accurately:

> "The power of taxation vested in the legislature is, with some exceptions, limited only by constitutional provisions designed to secure equality and uniformity in the assessment. The mode in which the property shall be appraised, by whom its appraisement shall be made, the time within which it shall be done, what certificate of their action shall be furnished, and when parties shall be heard for the correction of errors are matters resting in its discretion. Where directions upon the subject might originally have been dispensed with, or executed at another time, irregularities arising from neglect to follow them may be remedied by the Legislature, unless its action in this respect is restrained by constitutional provisions prohibiting retrospective legislation. It is only necessary therefore, in any case to consider whether the assessment could have been ordered originally without requiring the proceedings, the omission or defective performance of which is complained of, or without requiring them within the time designated. If they were not essential to any valid assessment, and therefore might have been omitted or performed at another time, their omission or defective performance may be cured by the same authority which directed them; *provided, always, that intervening rights are not impaired.* Such is the conclusion of numerous adjudications by the state courts upon the effect of curative Acts, and of this

court (Citing authorities). The completion of the assessment roll in the case at bar before the first of September in the years mentioned, and the form of the oath annexed, were not vital to the assessment itself as necessarily to render the defect arising from a later return or a deficient oath incurable. The completion of the assessment roll by that date was deemed essential by the court below, because the law required the assessors forthwith to cause notices to be published in three of the public newspapers of the city for twenty days, specifying a day at their expiration when they would meet and remain in session for five days for the purpose of reviewing their assessments on the application of any aggrieved. *The requirement was designed to afford taxpayers whose names were on the roll an opportunity for the examination and correction of the assessment of their property. The assessment could not stand if they were deprived of that opportunity.* (Emphasis ours.) But it is not perceived why it might not be legalized and confirmed by the Legislature giving them such opportunity after the time originally designated had expired. No just right of the taxpayer would thereby be defeated . . ."

The expressions in the said opinion of the court strongly indicate that the curative Act relied upon by the Appellees to sustain their judgment below is fatally defective for want of a provision for alternate notice and opportunity to be heard.

We respectfully submit that the allowance of the rulings in this case—*People of the State of Illinois* v. *R. K. Holmstrom*—to stand as a precedent will reverse the *stare decisis* and rules announced in the following cases:

London v. *City of Denver*, 210 U.S. 373, 52 L. Ed. 1103, 1112.

McGregor v. *Hogan*, 263 U.S. 234, 68 L. Ed. 282, 283-4.

Nickey v. *Mississippi*, 292 U.S. 393, 78 L. Ed. 1323, 1326.
Turpin v. *Lemon*, 187 U.S. 51, 47 L. Ed. 70, 74.
Orcutt v. *Crawford*, 85 Fed. (2) 146, 148; Certiorari denied 299 U.S. 594, 81 L. Ed. 438.
Wimberly v. *Cowan Inv. Corporation*, 80 Fed. (2) 452; Certiorari denied 298 U.S. 654, 80 L. Ed. 1381.
City of Lawrenceville v. *Maxwell*, 6 Ill. (2) 42, 51.
Dietman v. *Hunter*, 5 Ill. (2) 486, 489.
Heidenway v. *Harding*, 336 Ill. 606, 610.
Barnett v. *Cook County*, 388 Ill. 251.
Griffin v. *Cook County*, 369 Ill. 380.
People v. *Jenkins*, 347 Ill. 278.
Cooley on Taxation (4th Ed.) Vol. 3, Page 2257.

SUMMARY.

Where the law provides that assessment lists be published on or before July 10 (Section 103 of the Illinois Revenue Act), and,

Where the law requires that complaints relating to assessments be filed on or before August 1 (Section 108 (4) of the Illinois Revenue Act), and,

Where such statutory regulations are intended for the protection of the citizen and to prevent a sacrifice of his property (*French* v. *Edwards, supra*), and, to afford taxpayers whose names were on the roll an opportunity for examination and correction on the assessment (*Williams* v. *Board of Supervisors, supra*),

Delay of publication until after August 1, deprives the citizen of his right to examine the tax list and file his timely complaint to the Board of Review and hence deprives him of his right of due process of law; and,

Where the legislature passes a Curative Act validating the assessment "notwithstanding that the publication was not made as required by statute".

THE EFFECT OF SUCH CURATIVE ACT also is to deprive him or his right to notice and an opportunity to be heard. But as the legislature could not put aside or override constitutional limitations, the confirmation did not prevent inquiry in the alleged violations of such limitations. (*Road Improvement Dist. No. 1* v. *Missouri Pac. Railroad, supra.*)

With the Court's permission, we quote from the opinion of Mr. Justice Earl in a case decided in the middle of the Nineteenth Century:

> "It matters not upon the question of the constitutionality of such a law that the assessment has, in fact been fairly apportioned. The constitutionality of the law is tested, not by what has been done under it, but what may, by its authority, be done." *Stuart* v. *Palmer*, 74 N.Y. 183, 188, cited in *Albany City National Bank* v. *Maher*, 9 Fed. 884, 889.

We further submit that the Appellant's right of notice which is guaranteed to him by the due process clause of the Fourteenth Amendment to the Constitution of the United States ought to be freely pursued in the court of last resort and not denied him except upon plenary consideration.

JOHN CHIVARI,
Attorney for Appellant.

John Chivari
104 Fox Street
Aurora, Illinois

APPENDIX A.

(No. 33793.—Judgment affirmed.)

THE PEOPLE OF THE STATE OF ILLINOIS, Appellee, *vs.* R. K. HOLMSTROM, Appellant.

Mr. JUSTICE DAILY delivered the opinion of the court:

The People, by the State's Attorney, filed an action in debt in the county court of Kane County against R. K. Holmstrom, defendant, to recover delinquent personal property taxes for the years 1947, 1948, 1950, 1951, 1952 and 1953. After defendant filed a plea of *nil debet* supported by an affidavit, the court heard evidence in the matter, then, on June 23, 1955, entered judgment for plaintiff as prayed. Since the revenue is involved defendant has appealed directly to this court for review.

The defenses raised by defendant's plea were: (1) that publication of the assessment lists for each year had not been accomplished within the time provided in section 103 of the Revenue Act of 1939, as amended, and (2) that the requirements of section 170 of the same act, relative to collector's warrants, were not met. (See: Laws of 1939, pp. 925-926 and 949, respectively.) The question of the merit of such defenses is embodied in the errors assigned in this court, defendant contending that the omissions complained of operated to deny him due process of law as guaranteed by State and Federal constitutions.

During the years in question, section 103 of the Revenue Act, as it applied to Kane County, provided for the publication of personal property assessments on or before July 10 during the years 1947, 1948 and 1950, and on or before August 10 during the years 1951, 1952 and 1953. (See: Ill. Rev. Stat. 1947, chap. 120, par. 584; Ill. Rev.

Stat. 1953, chap. 120, par. 584; and par. 584 of intervening statutes.) Publication was made for the years involved in this proceeding as follows:

1947—August 16	1951—September 21
1948—August 26	1952—August 30
1950—August 15	1953—August 29

Delay in publication, it appears, was occasioned in each instance by the failure of township assessors to make timely delivery of assessment books to the supervisor of assessments as provided in section 94 of the Revenue Act of 1939. See: Laws of 1939, pp. 922-923.

The issue raised by the error assigned here is whether the failure to publish the lists within the time prescribed by statute rendered the assessments void. It is the contention of defendant that the publication requirement of section 103 is a mandatory one for the protection of the taxpayer and, under authority of *People* v. *Jennings*, 3 Ill. 2d 125, that noncompliance vitiates the tax. We find, however, that a validating act, approved and made effective May 21, 1955, and thus prior to the judgment in this cause, was enacted by the 69th General Assembly to provide that all real and personal property assessments for the year 1954 *and for all years prior thereto,* as provided in the Revenue Act of 1939, as amended, are validated for all purposes of taxation notwithstanding that the publication of the assessments was not made as provided by statute. (Laws of 1955, p. 175; Ill. Rev. Stat. 1955, chap. 120, par. 823.) Without more the defense relied upon by defendant may be held for naught. He contends, however, that the validating act itself is void and, in support of his position, urges that the General Assembly has power to validate by curative act only in the case of irregular or defective exercise of authority and that it cannot, in such manner, make a void proceeding valid.

While the argument of defendant may approximate a true statement of law, it is inapplicable to the validating act in question. The general rule is that in the absence of a constitutional prohibition the legislature may validate by a curative act any proceeding which it might have authorized in advance. (*People ex rel. Price* v. *Wisconsin Central Railroad Co.* 219 Ill. 94.) As applied to tax legislation, the rule has been interpreted to mean that the legislature has the power to pass an act curing a defect in a tax levy when the defect consists of the failure to observe some requirement of the law without which the legislature might have authorized the levy to be made. Thus, in the absence of constitutional requirements to the contrary, it has been held authority existed to cure the defect of failing to publish an appropriation ordinance, (*People ex rel. Stuckart* v. *Sandberg,* 282 Ill. 245,) the defect of failing to itemize a tax as required by statute, (*People ex rel. County Collector* v. *Chicago, Burlington and Quincy Railroad Co.* 323 Ill. 536; *People ex rel. Andrew* v. *Chicago, Milwaukee and St. Paul Railroad Co.* 324 Ill. 43,) and defects which stood in the way of a city council to act in the capacity of highway commissioner in levying road and bridge taxes. *People ex rel. Koehler* v. *Cleveland, Cincinnati, Chicago and St. Louis Railway Co.* 349 Ill. 476.

Looking to the present case, it is clear there is no constitutional requirement that tax assessment lists be published. Likewise, there seems to be little question that the legislature has the power to require or waive their publication as it sees fit. This was the effect of *Grant Land Association* v. *People ex rel. Hanberg,* 213 Ill. 256, where this court applied a statute which provided that the failure to publish tax assessments in any of the modes provides by statute did not constitute a valid objection to the tax. The latter case was cited with approval in *People* v. *Jennings,* 3 Ill. 2d 125, upon which defendant relies and in which a failure to publish was held to void the tax. The *Jennings*

case, however, may be distinguished both from the present case and the *Grant* case in that there was neither a validating act nor a statute to provide against the failure to publish the assessments. Under the facts, therefore, the principle of the cases previously discussed is the one to be applied here and we conclude that inasmuch as the legislature had the power to permit the levy of the taxes without requiring the assessments to be published, it was likewise within its power to cure irregularities in publication by the validating act.

Nor does the fact that publication of the assessments is waived constitute a denial of due process of law. Under comparable circumstances arising in *Dietman* v. *Hunter,* 5 Ill. 2d 486, we stated that the requirements of due process are satisfied by a law which affords an opportunity to be heard with respect to assessments before the board of review. In this case the Revenue Act provided for such hearings as did the rules of the board of review.

The second defense relied upon by defendant relates only to that part of the judgment embracing taxes levied for the years 1947, 1948 and 1950. During the years in question section 170 of the Revenue Act made the following provision: "To each collector's book a warrant, under the hand and official seal of the county clerk, shall be annexed, commanding the collector to collect from the several persons named in said book the several sums entered in the column of totals opposite their respective names." (Ill. Rev. Stat. 1947, chap. 120, par. 651.) In 1947, 1948 and 1950, the "collector's book" for the township in which defendant resided consisted of 27 volumes. A warrant of the county clerk was attached to the first of the volumes for each year, in which defendant's assessments did not appear, but none was affixed to the remaining volumes. The failue to attach a warrant to the books in which his

assessments appeared is urged by the defendant as making the present proceeding to collect null and void.

This is an action in debt instituted in the name of the People by the State's Attorney. It has long been held that distraint by the collector is not an exclusive remedy, and that a delinquent personal property tax, being a personal liability, may be collected in an action for debt. (*Town of Geneva* v. *Cole*, 61 Ill. 397; *People ex rel. Carr* v. *Chicago and Northwestern Railway Co.* 322 Ill. 150; *People ex rel. McDonough* v. *Chicago, Milwaukee, St. Paul and Pacific Railroad Co.* 354 Ill. 438.) In such an action the return of the collector that the taxes are delinquent is made *prima facie* evidence that they are due and unpaid, but if for any reason the return should be excluded, the liability of the taxpayer and the right of the taxing authority to recover may be shown by proving a valid assessment, the levy by competent authority, the extension of the taxes by proper officers, and their nonpayment. (*Ottawa Gas Light and Coke Co.* v. *People*, 138 Ill. 336, 345.) All of these elements from which defendant's personal liability stems are admitted or proved in the record before us. Indeed, defendant does not claim the assessments, levies and extensions were invalid, but contends only that the failure to attach a warrant to the books in which his assessments were recorded operates to bar this proceeding to collect them. Such a contention must be held to be without merit in view of the fact that the annexing of a collector's warrant is a condition precedent neither to the personal liability which has arisen by virtue of assessment, levy, and extension, nor to the right of the People to enforce such liability in an action of debt.

The judgment of the county court of Kane County was correct and is hereby affirmed.

Judgment affirmed.

APPENDIX B.

SUITS FOR TAXES ON FORFEITED REALTY OR DELINQUENT PERSONALTY. Sec. 275.

The county board may, at any time, institute suit in a civil action in the name of the People of the State of Illinois in any court of competent jurisdiction for the whole amount due for taxes and special assessments on forfeited propererty; or any county, city, town, school district or other municipal corporation to which any such tax or special assessment on forfeited property; or any county, city, town, school district or other municipal corporation to which any such tax or special assessment may be due, may, at any time, institute suit in a civil action in its own name, before any court of competent jurisdiction, for the amount of such tax or special assessment due any such corporation on forfeited property, and prosecute the same to final judgment. The county board may also, at any time, institute suit in a civil action in the name of the People of the State of Illinois, in any court of competent jurisdiction, against any person, firm or corporation, for the recovery of any personal property tax due from such person, firm or corporation, and in any such suit for the recovery of personal property tax, the return of the county collector that such taxes are delinquent, shall be *prima facie* evidence that such taxes are due and unpaid, but the fact that such taxes are due and unpaid may be proven by other competent testimony.

Ill. Rev. Stat. (1955) Ch. 120 Par. 756.

LISTING BY TAXPAYER; VALUATION BY ASSESSOR: Sec. 51.

Persons required to list property shall make out, under oath and deliver to the assessor, at the time required, a schedule of the numbers, amounts, quantity, and quality of all personal property in their possession or under their

control required to be listed for taxation by them. It shall be the duty of the assessor to determine and fix the fair cash value of all items of personal property, including all grain on hand on the first day of April, and in assessing notes, accounts, bonds and moneys, the assessor shall be governed by the same rules of uniformity that he adopts as to value in assessing other personal property.

Ill. Rev. Stat. (1955) Ch. 120 Par. 532.

RETURN OF ASSESSMENT BOOKS BY TOWNSHIP ASSESSORS: Sec. 94.

The township assessors in counties under township organization of less than 150,000 inhabitants shall, on or before the first day of June for the year for which the assessment is made, return the assessment books to the supervisor of assessments. Each of said books shall be verified by affidavit of the assessor substantially as follows:

State of Illinois,
County of .....—ss.

I do solemnly swear that the book or books ..... in number, as the case may be, to which this affidavit is attached, contains a full and complete list of all of the real and personal property in the township or assessment district herein described subject to taxation for the year ..... so far as I have been able to ascertain the same, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is a just and equal assessment of such property according to law.

Dated .....

Ill. Rev. Stat. Ch. 120 Par. 575.

ASSESSMENTS AND CHANGES BY SUPERVISOR OF ASSESSMENTS: Sec. 95.

The supervisor of assessments shall have the same authority as the township assessor to assess and to make changes or alterations in the assessment of property, and shall assess and make such changes or alterations in the assessment of property as though originally made. Such changes by the supervisor of assessments in valuations returned by the township assessor shall be noted in a column provided therefor, and no change shall be made in the original figures.

All changes and alterations in the assessment of real property shall be subject to revision by the board of review in the same manner that original assessments are reviewed.

Ill. Rev. Stat. Ch. 120 Par. 576.

PUBLICATION IN COUNTIES OF LESS THAN 500,000; NEWSPAPERS' FEES: Sec. 103.

In counties containing less than 500,000 inhabitants, as soon as the county assessor, supervisor of assessments or board of assessors, as the case may be, has completed the assessment he or it shall, in each year of a quadrennial assessment of real property, publish a full and complete list of the assessment of real and personal property, by townships if the county be so organized. In years other than years of a quadrennial assessment of real property, the assessor, supervisor of assessments or board of assessors, as the case may be, shall publish the assessment of personal property in full and a list of real estate for which assessments have been added or changed since the last preceding assessment, together with the amounts of the assessments on such real estate. Such publication shall be made on or before July 10 of that year in counties

with less than 150,000 inhabitants and on or before August 10 of that year in counties with 150,000 or more but less than 500,000 inhabitants, and shall be printed in some public newspaper or newspapers published in said county; or shall be mailed to every person in that township or, in counties not under township organization, in that county paying taxes upon personal property: Provided, that in every township or assessment district in which there is published one or more newspapers of general circulation, the list of such township shall be published in one of said newspapers. The newspaper shall be entitled to a fee of fifteen cents per line of publishing the assessment list and shall furnish to the local assessment officers as many copies of said paper containing the assessment list as he or they may require, said papers so furnished not to cost in excess of five (5) cents per copy. As amended by act approved July 15, 1953.

Ill. Rev. Stat. Ch. 120, Par. 584.

Powers and Duties of Board of Review: Sec. 108.

In counties containing less than 500,000 inhabitants, the board of review shall, in any year, whether the year of the quadrennial assessment or not:

(1) • • •

(2) • • •

(3) • • •

(4) On complaint in writing that any property described in such complaint is incorrectly assessed, the board shall review the assessment, and correct the same, as shall appear to be just. Such complaint to affect the assessment for the current year shall be filed on or before the first day of August in counties with less than 150,000 inhabitants and on or before the first day of September in counties with 150,000 or more but less than 500,000 inhabitants: Provided, that if the assessment books containing the assessment complained of are not filed with the board of

review by the 20th day of July in a county with less than 150,000 inhabitants or by the 20th day of August in a county with 150,000 or more but less than 500,000 inhabitants, then such complaint shall be filed on or before ten days after such lists are filed. • • •

(5) • • •

(6) • • •

(7) • • •

Ill. Rev. Stat. Ch. 120, Par. 589.

RETURN OF ASSESSMENT BOOKS TO BOARD OF REVIEW: Sec. 100.

In counties having a population of less than 150,000 inhabitants, the assessor, board of assessors or supervisor of assessment, as the case may be, shall on or before the third Monday in June of the year for which the assessment is made, return the assessment books to the board of review verified by affidavit, substantially in the following form:

State of Illinois }
County of ..... } ss.

I (or we) ..... assessor (or member of board of assessors, or supervisor of assessments) of ..... do solemnly swear that the book to which this is attached contains a correct and full list of all the real property (or personal property, as the case may be), subject to taxation in ..... so far as I (or we) have been able to ascertain the same; and that the assessed value set down in the proper volumn opposite the several kinds and descriptions of property is, in each case, fair cash value of such property, to the best of my (or our) knowledge and belief, and that the footings of the several columns in said book, and tabular statement returned herewith, are correct as I (or we) verily believe.

Dated .....

Ill. Rev. Stat. Ch. 120, Par. 581.

APPENDIX C.

State of Illinois }
Supreme Court } ss.

BE IT REMEMBERED, that to-wit: on the 22nd day of March 1956, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:

People State of Illinois, Appellee	Appeal from County Court
No. 33793 *vs.*	Kane County
R. K. Holmstrom, Appellant	A-14639
	Error to

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

THEREFORE, it is considered by the Court that the judgment of the County Court of Kane County

aforesaid, BE AFFIRMED IN ALL THINGS AND STAND IN FULL FORCE AND EFFECT, notwithstanding the said matter and things therein assigned for error.

I, FAE I. SEARCY, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said court this
(Seal) 25th day of May 1956

/s/ Fae I. Searcy
Clerk pro tempore,

Supreme Court of the State of Illinois
(R. 27)

FILED
NOV 8 1956
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1956.

No. 495

PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff-Appellee,

vs.

R. K. HOLMSTROM,
Defendant-Appellant.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

MOTION TO DISMISS OR AFFIRM AND BRIEF IN SUPPORT THEREOF.

ROBERT W. QUALEY,
127 South Third Street,
Geneva, Illinois,
Attorney for Appellee.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1956.

No. .....

PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff-Appellee,

vs.

R. K. HOLMSTROM,
Defendant-Appellant.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

MOTION TO DISMISS OR AFFIRM.

Now comes the appellee, the People of the State of Illi-
s, by Robert W. Qualey, its attorney, and moves (1) to
miss the appeal from the judgment of the Supreme
urt of the State of Illinois entered on the 22nd day of
y, 1956 in the case entitled *People of the State of Illi-
s, Plaintiff-Appellee* v. *R. K. Holmstrom, Defendant-
pellant,* or (2) in the alternative, to affirm said judg-
nt.

As the ground for such motion appellee states that the
d appeal does not present a substantial federal question,
that:

(1) The questions presented by appellant are limited
ely to the effect of failure to publish an assessment list
time, and do not present to the court a sufficient basis

for determining whether the tax procedure of the State of Illinois, whereunder the tax was levied, taken as a whole denies due process of law to the taxpayer.

(2) It is apparent on the face of the Jurisdictional Statement that appellant has not been denied due process of law. That notice by statute and a full hearing, is afforded the taxpayer under the Revenue Act of the State of Illinois (after giving effect to the curative act which is attacked by appellant in this appeal), is shown in Jurisdictional Statement, as follows:

(a) By the finding of the Supreme Court of Illinois that Illinois affords a hearing before the board of review. (Jurisdictional Statement, page 18.)

(b) By the Section 108 of the Revenue Act of the State of Illinois. (Jurisdictional Statement, pages 23 and 24.)

ROBERT W. QUALEY,
Attorney for Appellee.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1956.

No. .....

PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff-Appellee,

vs.

R. K. HOLMSTROM,
Defendant-Appellant.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

BRIEF IN SUPPORT OF MOTION TO DISMISS OR AFFIRM.

The appellee respectfully submits the following in support of its motion to dismiss the appeal from, or, in the alternative, to affirm the judgment of the Supreme Court of the State of Illinois entered May 22, 1956 in the case entitled *People of the State of Illinois, Plaintiff-Appellee* v. *R. K. Holstrom, Defendant-Appellant,* on the basis that it does not present a substantial federal question.

The matters set forth as the basis therefor are argued in order.

(1) The questions presented by appellant are limited solely to the effect of failure to publish an assessment list on time, and do not present to the court a sufficient basis for determining whether the tax procedure of the State of Illinois, whereunder the tax was levied, taken as a whole denies due process of law to the taxpayer.

PROPOSITION OF LAW.

Only the questions set forth in a jurisdictional statement or fairly comprised therein will be considered by the Supreme Court of the United States.

Rule 15. Rules of the Supreme Court of the United States.

ARGUMENT.

The appellee submits that the two questions presented by appellant (even assuming the questions as put include every subsidiary question fairly comprised therein) do not form a basis for determining whether or not due process of law has been denied. The failure, of itself, to publish a list of assessments on time could not be determinative on the question of due process. The questions, as presented in the Jurisdictional Statement, are limited to this publication and do not pretend to imply that the taxpayer has not been given notice by statute and an opportunity to be heard on his assessment.

The publication involved is governed by Section 103 of the Revenue Act of 1939 as appellant has set forth in his statement of the case. (Jurisdictional Statement, page 5.) It will be noted that this section (Jurisdictional Statement, page 22) provides for publication of assessments on or before a certain date, but does not provide, in any way, for a notice to the taxpayer of the time and place of a hearing on the assessment at which he may appear and be

heard. The time and place of such hearing is fixed by another section of the Revenue Act, namely, Section 108. (Jurisdictional Statement, pages 23 and 24.) (Section 108 (4) is set forth in full in Appendix A hereof.)

Applying Rule 15 of the Supreme Court of the United States that "only questions set forth in the jurisdictional statement or fairly comprised therein will be considered by the court", the appellee submits that the procedure afforded a taxpayer for a hearing on an assessment cannot be said to be fairly comprised in these questions. There is, therefore, no sufficient question presented on which the court can properly say whether or not, in the levy of the tax involved, due process of law has been denied.

---

(2) It is apparent on the face of the Jurisdictional Statement that appellant has not been denied due process of law. That notice by statute and a full hearing, is afforded the taxpayer under the Revenue Act of the State of Illinois (after giving effect to the curative act which is attacked by appellant in this appeal) is shown in Jurisdictional Statement, as follows:

(a) By the finding of the Supreme Court of Illinois that Illinois affords a hearing before the board of review. (Jurisdictional Statement, page 18.)

(b) By the Section 108 of the Revenue Act of the State of Illinois. (Jurisdictional Statement, pages 23 and 24.)

PROPOSITION OF LAW.

In tax matters, a statute prescribing the time and place of hearing and giving taxpayer an opportunity to be heard, provides due process of law:

Hager v. *Reclamation District 108*, 111 U. S. 701.
Lander v. *Mercantile National Bank*, 186 U. S. 458.
Kentucky Railroad Cases, 115 U. S. 321.
State Railroad Tax Cases, 92 U. S. 575 (609, 610).

ARGUMENT.

Should the Court be of the view that the questions set forth by appellant in the Jurisdictional Statement encompass the entire procedure for the assessment of property and the levy of taxes as contained in the Revenue Act of the State of Illinois, as construed by the Illinois Supreme Court, then the appellee contends that the Jurisdictional Statement shows upon its face that due process of law has not been denied to the taxpayer.

Under the rule announced in *Erie Railroad* v. *Tomkins*, 304 U. S. 64, it would appear that the Court should accept the finding of the Supreme Court of Illinois below that (a) publication of the assessment list is not required by the Constitution of that state (Jurisdictional Statement, page 17) and (b) the curative act involved in this appeal was valid (Jurisdictional Statement, page 18). This would, therefore, seem to present for consideration, whether, after

giving effect to the curative act, the taxpayer has been denied due process of law.

That the law of Illinois affords the taxpayer a hearing is clearly stated in the opinion of the Supreme Court of Illinois below in the following words:

> "Nor does the fact that publication of the assessments is waived constitute a denial of due process of law. Under comparable circumstances arising in *Dietman* v. *Hunter*, 5 Ill. 2d 486, we stated that the requirements of due process are satisfied by a law which affords an opportunity to be heard with respect to assessments before the board of review. In this case the Revenue Act provided for such hearings as did the rules of the board of review." (Jurisdictional Statement, page 18.)

As the appellee reads the decisions, the Court will accept this as a correct statement of the law of Illinois.

Section 108 (4) of the Revenue Act of Illinois is only meagerly set forth by appellant (page 23 Jurisdictional Statement) and is set forth in full in Appendix A to this brief. Here it will be seen that the statute provides that the complaints are to be filed with the board of review on or before the 1st day of August, provided, if the assessment books had not been filed with the board of review before the 20th day of August, then the complaint is to be filed on or before ten days after such lists are filed.

From sub-section (4) it is clear that the time and place of filing complaints to assessments is fixed by statute. It is to be noted that the last sentence of this paragraph provides "* * * complaints relating to personal property shall be heard in their order by classes, in pursuance of the order of the board heretofore mentioned until all complainants have been heard and passed upon by the board."

The Supreme Court in *People ex rel. Alschlager* v. *Board of Review*, 352 Ill. 157, the Court construed these very

words as follows: "These provisions of the statute impose the duty upon the board of review to grant a hearing to each of the relators in this case upon his complaint filed with that board." In the case cited and in other cases in Illinois the Court sustained the right of the taxpayer to a writ of mandamus where the board of review refused to grant a hearing upon a complaint.

There is, therefore, by statute and the decision of the Supreme Court of the State of Illinois set forth in the Jurisdictional Statement a clear showing that a proper statutory notice is provided and each taxpayer is entitled to a hearing on his assessment as a matter of absolute right.

That a statute of this kind giving the time and place where complaints to assessments will be heard is sufficient notice was held in *Hager* v. *Reclamation District 108*, 111 U. S. 701. Referring to situations where a tax is fixed according to value of property, the Court in this case had this to say:

> "The law in prescribing the time when such complaints will be heard gives all the notice that is required and a proceeding by which the valuation is determined, though it may be followed, if the tax is not paid, by sale of the delinquent's property, is due process of law."

In construing the tax statutes of many of the States providing a time for hearings without other notice, the Court has often quoted with approval the words of Justice Miller in the *State Railroad Tax Cases*, 92 U. S. 575, as follows:

> "This board had its time of sitting fixed by law. Its sessions are not secret. No obstruction exists to the appearance of anyone before it to assert a right or redress a wrong, and in the business of assessing taxes that is all that can be reasonably asked."

Applying holdings in the cases cited to the matters appearing in the Jurisdictional Statement, it is clear that the taxpayer has not been denied due process of law. There is, therefore, no substantial federal issue presented to the Court and the appellee urges that the appeal be dismissed, or, in the alternative that judgment of the Supreme Court of the State of Illinois in the case below be affirmed.

Respectfully submitted,

ROBERT W. QUALEY.
Attorney for Appellee.

APPENDIX A.

Section 108, Revenue Act of 1939 of the State of Illinois
Powers and Duties of the Board of Review
Paragraph (4).

(4) On complaint in writing that any property described in such complaint is incorrectly assessed, the board shall review the assessment, and correct the same, as shall appear to be just. Such complaint to affect the assessment for the current year shall be filed on or before the first day of August in counties with less than 150,000 inhabitants and on or before the first day of September in counties with 150,000 or more but less than 500,000 inhabitants: Provided, that if the assessment books containing the assessment complained of are not filed with the board of review by the 20th day of July in a county with less than 150,000 inhabitants or by the 20th day of August in a county with 150,000 or more but less than 500,000 inhabitants, then such complaint shall be filed on or before ten days after such lists are filed. The board may also of its own motion, at any time before its revision of the assessments is completed in every year, increase, reduce or otherwise adjust the assessment of any individual or corporation, on real property or personalty, making changes in the valuation thereof as may be just, and shall have full power over the assessment of any individual or corporation, and may do anything in regard thereto that it may deem necessary to make a just assessment; but no assessment shall be increased until the person or corporation to be affected shall have been notified, and given an opportunity to be heard, except as hereinafter provided;

and before making any reduction in assessments of its own motion, the board of review shall give notice to the board of assessors, assessor or supervisor of assessments which certified the assessment, and give such assessor or supervisor of assessments an opportunity to be heard thereon. All complaints of errors in assessments, real or personal, shall be in writing and shall be filed by the complaining party with said board of review, in duplicate, and the duplicate shall be forthwith filed by the board of review with the board of assessors, assessor or supervisor of assessments certifying such assessment. Complaints relating to real estate shall be classified by towns or taxing districts by the clerk of said board of review, and complaints relating to personal property shall be classified in such manner as the board of review shall determine by order for that purpose, duly entered of record; all classes of complaints shall be docketed numerically, each in its own class, in the order in which they shall be presented, as near as may be, in books kept for that purpose, which books shall always be open to public inspection. Complaints relating to real estate shall be considered by towns or taxing districts and complaints relating to personal property shall be heard in their order by classes, in pursuance of the order of the board heretofore mentioned, until all complaints have been heard and passed upon by the board. (Ill. Rev. Stat. Chap. 120, Para. 589.)

FILED
NOV 26 1956
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1956

No. 495

PEOPLE OF THE STATE OF ILLINOIS,
Plaintiffs-Appellees,

vs.

R. K. HOLMSTROM,
Defendant-Appellant.

APPEAL FROM THE SUPREME COURT OF ILLINOIS

ARGUMENT IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM AND BRIEF IN SUPPORT THEREOF.

JOHN CHIVARI
104 Fox Street
Aurora, Illinois
Attorney for Appellant.

CHICAGO LAW PRINTING CORPORATION, 189 W. MADISON, CHICAGO – FRANKLIN 2-6521

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1956

No. 495

PEOPLE OF THE STATE OF ILLINOIS,
Plaintiffs-Appellees,

vs.

R. K. HOLMSTROM,
Defendant-Appellant.

APPEAL FROM THE SUPREME COURT OF ILLINOIS

ARGUMENT IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM AND BRIEF IN SUPPORT THEREOF.

QUESTIONS PRESENTED BY THIS APPEAL.

Where the local assessor, who is required by statute to publish the assessed valuation imposed upon the personal property of the Appellant for taxation purposes, fails to publish said assessment within the time limited by said statute, may the state legislature validate said failure to publish without denying to the Appellant his rights of due process of law under the Constitution of the United States?

Where the local assessor, who is required by Statute to publish the assessed valuation imposed upon the personal property of the Appellant for taxation purposes, fails to publish said assessment within the time limited by said Statute, would the action to collect the taxes levied pursuant to said assessment be repugnant to Appellant's right of due process of law under the Constitution of the United States?

Jurisdictional Statement
page 5.

REVIEW OF LAWS APPLICABLE.

In counties of less than 150,000 inhabitants, the township assessor shall return the assessments with his certification thereof to the supervisor of assessments on or before the first day of June for the year for which the assessment is made.

Section 94, Ill. Revenue Act,
Appendix B, page 21.

(The Act fails to provide for the return of the assessments or certification thereof by the assessor to the supervisor of assessments in counties of more than 150,000 inhabitants. Kane County, Illinois, attained a population of 150,000 or more inhabitants in the year 1950.) (R-5)

In counties of less than 500,000 inhabitants the supervisor of assessments shall return the assessments with his certification thereof to the Board of Review on or before the third Monday in June of the year for which the assessment is made.

Section 100 Ill. Revenue Act,
Appendix B, page 24.

The Supervisor of assessments must publish the complete assessment list on or before July 10th in counties of less than 150,000 inhabitants, and on or before August 10th in counties of more than 150,000.

Section 103 Ill. Revenue Act, Appendix B, page 22.

A taxpayer must file his complaint as to the assessment of any property to the Board of Review in writing on or before the first day of August in counties with less than 150,000 inhabitants, and on or before the first day in September in counties of more than 150,000: Provided that if the books containing the assessments are not filed therewith by the 20th day of July in a county with less than 150,000 inhabitants, or by the 20th day of August in a county with 150,000 or more inhabitants, then such complaint shall be filed on or before ten days after such lists are filed.

Section 108, Par. 4 Ill. Revenue Act, Appendix B, page 23.

The record is silent as to the date when the assessment books were filed with the Board of Review by the Supervisor of assessments. Under the doctrine of *omnia praesumuntur rite et solemniter esse acta donec probetur in contratium, People* v. *Miller et al.,* (288 N.Y. 31, 41 N.E. (2) (445) followed in Illinois:—

Jackson v. *Cummings,* 19 Ill. 449, 451.

Mix v. *The People ex rel. Shaw,* 81 Ill. 118, 119.

W. St. L. & P. Ry. Co. v. *The People ex rel. Walker,* 137 Ill. 181, 185.

Mix v. *The People ex rel. Suigert,* 86 Ill. 312, 313.

The People v. *Garner,* 267 Ill. 396, 403.

Bloom v. *Juergemeyer,* 344 Ill. Appellate 625, 630, 101 N.E. (2) 851, 853.

Gard v. *Dalbeare,* 223 Ill. App. 496, 500.

one is presumed to have performed his official duties and this presumption is extended to the performance of their duties by tax officers within the time prescribed by a directory statute. *Jackson* v. *Cummings* (*Supra*); *Mix* v. *The People ex rel. Shaw* (*Supra*).

In Illinois, the courts are not permitted to fix valuation of property for tax purposes.

Cook County v. *Columbia Ins. Co.*, 329 Ill. 189, 160 N.E. 351.

People ex rel. Harding v. *Hart*, 332 Ill. 467, 163 N.E. 769.

Heidenway v. *Harding*, 336 Ill. 606, 168 N.E. 630.

People v. *Illinois Woman's Athlete Club*, 360 Ill. 577, 196 N.E. 881.

People ex rel. Brittain v. *Outwater*, 360 Ill. 621, 196 N.E. 835.

People ex rel. Higram v. *Wasson Coal Co.*, 403 Ill. 30, 85 N.E. (2) 182.

In Illinois where a taxpayer fails to take advantage of the statutory remedy of appealng to the Board of Review from assessor's valuation of property he cannot complain of excessive valuation in absence of proof of fraud, actual or constructive.

People ex rel. Higram v. *Wasson Coal Co.*, 403 Ill. 30, 85 N.E. (2) 182.

People ex rel. Tedrick v. *Allied Oil Corp.*, 388 Ill. 219, 57 N.E. (2) 859.

GROUNDS FOR APPELLEE'S MOTION TO DISMISS.

The questions presented by appellant are limited solely to the effect of failure to publish an assessment on time, and do not present to the court sufficient basis for determining whether the tax procedure of the State of Illinois, whereunder the tax was levied, taken as a whole denies due process of law to the taxpayer.

REBUTTAL:

Whether the tax procedure of the State of Illinois, whereunder the tax was levied, taken as a whole, denies due process of law to the taxpayer is not specifically questioned at this point. The precise questions we present by this appeal are as quoted hereinbefore at the beginning of this brief.

As to whether or not the failure to publish an assessment list on time presents to the court a sufficient basis for determining the denial of due process of law we wish to point out that Appellee has failed to cite any authority for this legal assumption. Nevertheless, on this point, we would call the honorable court's attention to the following authorities sustaining our position in that regard:

140 A. L. R. on page 1000 *et seq.*

"Section 1130. TIME OF NOTICE. A notice of assessment does not hold good from year to year. A notice given in the mode prescribed by statute, but a day or two later, is of no effect."

Cooley on Taxation vol. 3.
Fourth Edition page 2285.

"* * * the completion of the assessment roll by that date was deemed essential by the court below because the law required the assessors forthwith to cause notices to be publised in three of the public newspapers of city for twenty days, specifying when they would meet and remain in session five days for the purpose of reviewing their assessments on the application of any one aggrieved. The requirement was designed to afford taxpayers whose names were on the roll an opportunity for examination and correction of the assessment of their property. *The assessment could not stand if they were deprived of that opportunity.* (Emphasis is ours.) But it is not perceived why it

might not be legalized and confirmed by the legislature giving to them such opportunity after the time originally designated has expired. No just right of the taxpayer would thereby be defeated."

William v. *Board of Supervisors* (N.Y. 1886) 122 U.S. 154, 30 L. Ed. 1088, 1090.

Lyon v. *Alley*, 130 U.S. 177, 32 L. Ed. 899, Page 902.

In Re Chicago Rys. Co. (Ill., 1949) 175 Fed. (2) 282, Certiorari denied 338 U.S. 995, 94 L. Ed. 590.

People v. *Jennings*, 3 Ill. (2) 125, 128, 119 N.E. (2) 781, 782-783.

March v. *Chestnut*, 14 Ill. 223.

Brown et al. v. *Hogle, et al.*, 30 Ill. 119, 141, 142.

In the past, this Court has recognized the substantiality of the questions posed by curative statutes:

"There can be no doubt that the legislative confirmation placed the assessment on the same plane as if it were made by the legislature and thereby cured mere irregularities on part of the assessors; but as the legislature could not put aside or override constitutional limitations, the confirmation did not prevent inquiry into the alleged violation of such limitation."

Road Imp. Dist. No. v. *Mo. Pac. R. R. Co.*, 274 U.S. 188, 71 L. Ed. 992, 994.

A contrary attitude would be inconsistent with the general rule of federal jurisdiction:

"Federal Courts abstain from interference with a state's fiscal affairs, and where the remedy at law is plain, adequate, and complete, aggrieved party is left

to that remedy in state courts, from which, if any federal question is involved, the cause may be brought to the Federal Supreme Court for review.

Lawrence Print Works v. *Lyncy*, (CCA Mass., 1945) 146 Fed. (2) 996, citing *Matthews* v. *Rodgers*, 284 U.S. 521, 76 L. Ed. 447; *Great Lakes Dredge & Dock Co.* v. *Huffman*, 319 U.S. 293, 87 L. Ed. 1407.

IT IS APPARENT ON THE FACE OF THE JURISDICTIONAL STATEMENT THAT APPELLANT HAS NOT BEEN DENIED DUE PROCESS OF LAW. THAT NOTICE BY STATUTE AND A FULL HEARING, IS AFFORDED THE TAXPAYER UNDER THE REVENUE ACT OF THE STATE OF ILLINOIS (after giving effect to the curative act which is attacked by the appellant in this appeal) **IS SHOWN IN THE JURISDICTIONAL STATEMENT AS FOLLOWS:**

(a) By The Finding Of The Supreme Court Of Illinois That Illinois Affords A Hearing Before The Board Of Review.

REBUTTAL:

We cannot see the logic of counsel's proposal to "give effect to the curative Act" insofar as its effectiveness is precisely the issue in this appeal. We would also point out the illogical insistence of the Appellee to the effect that the statutes of Illinois afford a taxpayer notice required under the due process clause in the face of the curative Act which validates the tax "*notwithstanding that the publication of real or personal assessments, or both, was not made as required by statute.*"

(b) By Section 108 Of The Revenue Act Of Illinois.

REBUTTAL:

We concede that Section 108 provides for the filing of, and hearing complaints as to assessments. This section also provides for the time when the Board of Review shall meet and of course the defendant-appellant is charged with knowledge of said provisions. We must point out, however,—and this is important as it pin-points an important issue in this case—the taxpayer is also entitled to notice under Section 103 of the act to advise him as to the valuation of his and his neighbor's property. This notice is his constitutional right by reason of said Section 103 so that he might have time for contemplation and comparison, to prepare his objections if aggrieved, and to file them in apt time with the Board of Review. (*March* v. *Chestnut,* (*Supra*); *In Re Chicago Railways Co.,* (*Supra*) page 289; *Lyons* v. *Alley,* (*Supra*), page 902; *Williams* v. *Albany County,* (*Supra*) page 1090; *Brown, et al.* v. *Hogle, et al.,* (*Supra*), page 142; *People* v. *Jennings,* 3 Ill. (2) 125, 128 N.E. 781, 782-783; 140 A. L. R. 1000.)

Hence, on authority of *Road Improvement Dist. No.* 1 v. *Missouri Pac. Railroad,* (*Supra*), since the legislature may not override constitutional limitations the confirmation of the assessment by the Act does not prevent inquiry in the alleged violations of such limitations.

Here is a recapitulation of the date of publication of the assessment list (R-5) in relation to the time when the taxpayer was required by statute to file his complaint to the Board of Review:

Year	Date when assessments were published.	Deadline for complaint to Board of Review
1947	August 16, 1947	August 1, 1947
1948	August 26, 1948	August 1, 1948
1950	October 19, 1950	September 1, 1950
1951	September 21, 1951	September 1, 1951
1952	August 30, 1952	September 1, 1952
1953	August 29, 1953	September 1, 1953

Now if we may be permitted a question:

Exactly how much time was afforded the taxpayer for contemplation and comparison and if aggrieved, to prepare his objections in writing and to file them in apt time with the Board of Review?

Respectfully submitted,

JOHN CHIVARI,
Attorney for Appellant.

DECEMBER 10, 1956.

Decisions Per Curiam.

No. 495. HOLMSTROM *v.* ILLINOIS. Appeal from the Supreme Court of Illinois. *Per Curiam:* The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question. *John Chivari* for appellant. *Robert W. Qualey* for appellee. Reported below: 8 Ill. 2d 401, 134 N. E. 2d 246.

No. 413 [illegible]